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# Message Text

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17/15
ACTION PM-04

INFO OCT-01 EA-07 ISO-00 CIAE-00 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 ERDA-05

ACDA-05 OMB-01 NRC-05 /070 W
---------- 039004
R 080645Z MAR 76 CCY FOR MCN
FM AMEMBASSY CANBERRA
TO SECSTATE WASHDC 7667
INFO AMEMBASSY WELLINGTON
SECDEF WASHDC
CNO WASHDC
CINCPAC
CINCPACFLT

C O N F I D E N T I A L CANBERRA 1807

CINCPAC FOR POLAD

E.O. 11652: GDS
TAGS: MARR, MNUC, AS
SUBJECT: NPW VISITS TO AUSTRALIA

REF: (A) 75 CANBERRA 7466 (DTG 060410Z NOV 75), (B) 75 STATE 228946 (DTG 251902Z SEP 75), (C) 75 CANBERRA 2625 (DTG 290655Z APR 75)

1. SUMMARY: GOA STILL HAS PROBLEMS WITH US EXPLANATION PROVIDED REFTEL (B). GOA HAS TWO PROBLEMS. FIRST, THERE IS A POLITICAL PROBLEM. WHILE GOA APPRECIATES FACT THAT PROPOSED US ORAL EXPLANATION SHOULD SATISFY ITS CONCERNS, GOA BELIEVES THAT AT LEAST A PUBLIC STATEMENT FROM THE USG OR THE GOA ALONG THE LINES OF THE ORAL EXPLANATION CONTAINED REFTEL (B) IS NECESSARY TO MEET POLITICAL SENSITIVITIES IN AUSTRALIA CONCERNING NPW VISITS. SECONDLY, GOA HAS A LEGAL PROBLEM CONCERNING THE RESPECTIVE APPLICATIONS OF ARTICL 12 OF THE STATUS OF FORCES AGREEMENT OF 9 MAY 1963 OR PL 93-513 IN THE EVENT OF AN ACCIDENT INVOLVING A US NPW. ACTION REQUESTED: THAT THE USG CONFIDENTIAL

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EXPRESS WILLINGNESS FOR EITHER THE USG OR THE GOA TO MAKE A PUBLIC STATEMENT CONCERNING THE APPLICATION OF PL 93-513 IN THE EVENT OF AN ACCIDENT INVOLVING A US NPW. THAT DEPARTMENT GIVE US A CLEAR STATEMENT WHICH

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WILL CONVINCE THE GOA THAT PL-93-513 AND NOT ARTICLE 12 OF THE STATUS OF FORCES AGREEMENT WOULD CONTROL IN THE EVENT OF A NUCLEAR INCIDENT ARISING FROM A US NPW VISIT TO AUSTRALIA. DEPARTMENT WILL APPRECIATE THAT LEGAL CONCERNS OF THIS NATURE ARE DIFFICULT TO ADDRESS BY EXCHANGING VIEWS VIA CABLES AND MAY WISH TO CONSIDER SENDING QUALIFIED LAWYERS TO DISCUSS THESE ISSUES DIRECTLY WITH GOA LAWYERS WHO ARE WORKING THE PROBLEM. END SUMMARY.

2. BROOKE OF DFA'S DEFENSE DIVISION GAVE EMBOFF A PAPER OUTLINING GOA LEGAL CONCERNS RE NPW VISITS WHICH IS REPEATED BELOW:

BEGIN TEXT:

3. QTE. FROM AN AUSTRALIAN LEGAL VIEWPOINT, RELIANCE SOLELY ON U.S. PUBLIC LAW 93-513 WOULD NOT GUARANTEE FULL COMPENSATION FOR PARTIES IN AUSTRALIA (INCLUDING THE AUSTRALIAN AND STATE GOVERNMENTS) SUFFERING DAMAGE OR PERSONAL INJURY AS A RESULT OF NUCLEAR INCIDENTS INVOLVING THE NUCLEAR REACTOR OF A U.S. WARSHIP, BECAUSE -

(A) THE U.S. PUBLIC LAW COULD BE AMENDED OR EVEN REPEALED WITHOUT AUSTRALIAN AGREEMENT;

(B) THE INTERPRETATION OF PL 93-513, THAT IT WOULD APPLY ON A QTE NO FAULT END QTE BASIS WITHOUT ANY NEED FOR CLAIMANTS TO PROVE FAULT ON THE PART OF THE U.S., IS NOT WRITTEN INTO PL 93-513 AND THEREFORE DOES NOT HAVE THE STATUS OF A PUBLIC LAW; NOR IS IT RECOGNIZED IN ANY INTERGOVERNMENTAL AGREEMENT; AND

(C) IN THE EVENT THAT CLAIMS WERE MADE IN AUSTRALIAN COURTS, THOSE COURTS COULD NOT APPLY THE U.S. PUBLIC LAW AND THE U.S. HAS RESERVED ITS RIGHT TO PLEAD SOVEREIGN IMMUNITY.

4. QTE. MOREOVER, PL 93-513 DOES NOT (AND COULD NOT) EXCONFIDENTIAL



CLUDE THE POSSIBLE OPERATION OF THOSE PROVISIONS IN ARTICLE 12 OF THE STATUS OF FORCES AGREEMENT OF 9 MAY 1963 BETWEEN AUSTRALIA AND THE U.S., WHICH IN THE AUSTRALIAN VIEW SHOULD NOT BE DEEMED TO APPLY EXCEPT IN THE CIRCUMSTANCES MENTIONED IN THE DRAFT EXCHANGE OF NOTES OF APRIL 1975.

5. QTE. IT IS FOR THESE REASONS THAT AUSTRALIAN LEGAL AUTHORITIES HAD PUT FORWARD IN APRIL 1975 A DRAFT EXCHANGE OF NOTES ON THIS SUBJECT. END QTE. END TEXT.

6. BROOKE SAID GOA HAD TWO PROBLEMS. FOR POLITICAL REASONS GOA FELT THAT AT LEAST A PUBLIC STATEMENT BY USG OR

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GOA ALONG THE LINES OF ORAL EXPLANATION PREVIOUSLY PROVIDED BY EMBOFF WHO DREW ON REFTEL (B) WOULD BE NECESSARY TO MEET POLITICAL SENSITIVITIES REGARDING NPW VISITS TO AUSTRALIA. GOA ALSO NEEDED A GOOD LEGAL PRESENTATION WHICH COULD CONVINCE LAWYERS HERE THAT PL 93-513 AND NOT ARTICLE 12 OF THE SOFA OF 9 MAY 1963 WOULD CONTROL IN THE EVENT OF AN ACCIDENT ARISING FROM A NUCLEAR INCIDENT INVOLVING AN US NPW TO AUSTRALIA.
HARGROVE

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**TAGS:** MARR, MNUC, AS
**To:** STATE INFO WELLINGTON
SECDEF
CNO
CINCPAC
CINCPACFLT

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